

2019 May-15 PM 12:18

U.S. DISTRICT COURT

N.D. OF ALABAMA

## UNITED STATES DISTRICT COURT

**TRAVIS SIMPSON,**

**Plaintiff,**

**V.**

**YOGI'S TEXACO, et al.,**

## Defendants.

**5:18-cv-01287-RDP-SGC**


# MEMORANDUM OPINION

The Magistrate Judge entered a report on April 16, 2019, recommending this action be dismissed without prejudice for lack of federal subject matter jurisdiction. (Doc. 7). Alternatively, the Magistrate Judge recommended this action be dismissed without prejudice for failing to state a claim upon which relief can be granted. (*Id.*). Although the Magistrate Judge advised Plaintiff of his right to file specific written objections within fourteen (14) calendar days, no objections have been received by the court.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the Report and Recommendation, the Magistrate Judge's report is **ADOPTED** and the recommendation is **ACCEPTED**. Therefore, this action is due to be dismissed without prejudice for lack of subject matter jurisdiction. 28

U.S.C. §§ 1331, 1332. Alternatively, this action is due to be dismissed for failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).<sup>1</sup>

**DONE** and **ORDERED** this May 15, 2019.

  
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**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Title 28 U.S.C. § 1915A(a)-(b)(1) directs the court to: (1) review a complaint in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity; and (2) dismiss the complaint, or any portion of the complaint, that is frivolous, malicious, or fails to state a claim upon which relief may be granted. Here, the plaintiff has not named a governmental entity or employee as a defendant. (Doc. 5). However, under 28 U.S.C. § 1915(e)(2)(B)(ii), the court is required to dismiss any case brought *in forma pauperis* if the complaint fails to state a claim upon which relief may be granted. Therefore, the court finds an alternate basis of dismissal is appropriate under 28 U.S.C. § 1915(e)(2)(B)(ii).